IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

WP(C).No. 24661 of 2007(J)

PETITIONER:

PUSHPALATHA M.R., AGED 45 YEARS,
WIFE OF E.V.PRAKASH, CLERK, CANARA BANK,
REGIONAL OFFICE, ERNAKULAM, RESIDING AT
EDAVAZHIKKAL HOUSE, VARAPUZHA P.O., 682 517,
ERNAKULAM DISTRICT.

BY ADV. SRI.H.B.SHENOY
SRI.B.ASHOK SHENOY
SMT.LAKSHMI B.SHENOY
SRI.SOBHAN GEORGE

RESPONDENTS:

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1. CANARA BANK REPRESENTED BY ITS
GENERAL MANAGER, CIRCLE OFFICE, M.G.ROAD,
SPENCER JUNCTION, THIRUVANANTHAPURAM - 39.

2. THE DEPUTY GENERAL MANAGER,
CANARA BANK, CIRCLE OFFICE,
KOZHIKODE.

3. THE DIVISIONAL MANAGER, CANARA BANK,
REGIONAL OFFICE, ERNAKULAM.

BY ADV. SRI.P.GOPINATH MENON, SC, CANARA BANK

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/08/2007, ALONG WITH WPC NO. 23269 OF 2007 & OTHER CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) Nos.24661, 24766, 23269, 24765, 24924, 24764, 25080, 25081 & 25083 OF 2007
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Dated this the 21st August, 2007

J U D G M E N T

These writ petitions are filed by the employees of Canara Bank belonging to non-subordinate cadre. They are aggrieved by orders transferring them to the various branches and the regional office of the bank in Calicut, Malappuram and Palakkad Districts, coming within the Calicut circle.

2. The ground on which the transfer is impugned is that it is in violation of the provisions of the All India Settlement produced as Exts. P2 and P3 in W.P.(C) No. 24661 of 2007. Clause 32 of the said settlement (Ext. P2) provides that in continuation of clause 32 of 7th Bipartite Settlement dated 27th March 2000, it is agreed between the parties that deployment of non-subordinate staff in banks which are parties to the settlement shall be in accordance with the terms and conditions set forth in Schedule VI to the settlement. Ext. P3 is an extract of Schedule VI and provides that

a workman in the non-subordinate cadre is liable to be deployed anywhere within a District, and if deployed outside the District, it may be to a Branch/office upto a distance not exceeding 100 km., from the present place of posting. It is also stated that in terms of the provisions contained in Schedule VI, any settlement/policy that prevails in the bank at the time of the settlement will have to be modified on a par with the terms and conditions of the settlement. Relying on these clauses counsel would submit that the transfers which are impugned in these writ petitions are in violation of the provisions of the settlement and are illegal and liable to be interfered with.

3. On the other hand the contention of the bank is that paragraph 536 of the Sastri Award enables them to effect transfers and the relevant portion of para 536 is extracted below for reference:

> "..... We further direct that even in the case of workmen not belonging to the subordinate staff, as far as possible, there should be no transfer outside the State or the language areas in which an employee has been serving, except of course, with his consent."

It is contended that this provision enables the bank to

effect transfers within the district and within the language area and the freedom of the bank in this behalf according to them, is unfettered. In so far as Schedule VI is concerned, it is contended that it deals with deployment of staff in terms of clause 32 of Ext. P2 referred to above and transfer and deployment are two different matters and therefore Schedule VI does not apply to transfer at all. Counsel makes particular reference to clause (xiii) of Schedule VI which provides as follows:

> "(xiii). The above provisions on deployment are without prejudice to the provisions of paragraphs 535 and 536 of the Sastry Award relating to transfer of workmen."

4. I have considered the rival submissions made by the respective counsel.

5. Initially, I was reluctant to entertain these writ petitions for the reason that what is claimed are rights arising out of conciliation settlements which are governed by the provisions of the Industrial Disputes Act. In my view, therefore, if there is a violation of the terms of the settlement as contended by the petitioners, the remedy available to them was to

take up the matter before the provisions created under the Industrial Disputes Act itself. But counsel argued on the merits and invited this judgment on merits.

6. I am satisfied that in cases of transfer the restrictions those are provided in Schedule VI of Ext. P2 settlement, which are applicable only in the case of deployment in terms of clause 32, are inapplicable. This is more clear from clause (xiii) of Schedule VI which provides that the provisions of deployment are without prejudice to the provisions of paragraphs 535 and 536 of the Sasthri Award relating to transfer of workmen. If that be so, the case of the petitioners that there is violation of the provisions of the settlement falls to the ground and is only to be repelled.

7. Contention has been raised that the bank has discriminated employees in the sense that several employees with longer service are retained while others with lesser service have been transferred out. This has been answered by the bank in paragraph 3 of the counter affidavit wherein they have stated that out of the 19 transfers effected, 2 are request transfers to

Calicut Region and the bank has selected the other 17 employees including the petitioners based on the norms adopted by them. They are employees who had completed more than 5 years in the respective places and are below 50 years of age. It is also stated that the only exceptions to these general norms were cases of widows, peon-promotee clerks and handicapped employees, considering their financial situation and other mitigating factors. Since the bank has followed a uniform pattern in the matter of identifying employees who are to be transferred, no fault can be found in such cases. There is a complaint that union officials are left undisturbed even after long period of stay in particular branches. This also has been answered by the counsel, on instructions, that in their case also the aforesaid norms have been applied.

8. In some of these cases personal difficulties have been highlighted by counsel for the petitioners and on that basis they seek exemption from transfer. One such case is that of the petitioner in W.P.(C) No. 24924 of 2007 which shows that she had suffered an accident and was under prolonged hospitalisation. In

other cases also similar grievances have been mentioned. Such individual grievances will not justify interference with the order of transfer by this Court under Article 226 of the Constitution. This is a matter to be examined by the bank. The petitioners who are aggrieved by the transfers can make suitable representation to the General Manager of the Thiruvananthapuram Circle who will examine their individual grievances and pass orders thereon.

Subject to above, all these writ petitions will stand dismissed.

ANTONY DOMINIC
JUDGE

jan/-